

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

DEPUTY

ANGELICA DOVE,

Plaintiff,

-vs-

Case No. A-14-CA-954-SS

LEE MORRIS DOVE,

Defendant.

ORDER

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Plaintiff Angelica Dove's Original Petition for Divorce [#1] and the Report and Recommendation of United States Magistrate Judge Andrew W. Austin [#4]. Neither party filed objections to the Report and Recommendation. Having reviewed the documents, the governing law, and the file as a whole, the Court enters the following opinion and orders.

All matters in this case were referred to United States Magistrate Judge Andrew W. Austin for report and recommendation pursuant to 28 U.S.C. § 636(b) and Rule 1 of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Dove is entitled to de novo review of the portions of the Magistrate Judge's report to which she filed specific objections. 28 U.S.C. § 636(b)(1). All other review is for plain error. *Starns v. Andrews*, 524 F.3d 612, 617 (5th Cir. 2008). Nevertheless, this Court has reviewed the entire file de novo, and agrees with the Magistrate Judge's recommendation.

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Background

Dove, proceeding pro se, asks this Court to grant her a divorce from her husband, using state court forms apparently downloaded from the internet. Despite noting significant oddities in Dove's filing suggesting Dove may not have been the person who filed this action at all, *see* Report & Rec. [#4] at 2 n.1, the Court has permitted Dove to proceed *in forma pauperis*.

Analysis

This Court shall dismiss a case brought *in forma pauperis* if the Court determines the action (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). "A district court may dismiss under § 1915 for failure to state a claim if it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Trujillo v. Williams*, 465 F.3d 1210, 1224 (10th Cir. 2006). Such a dismissal may occur at any time, before or after service of process and before or after the defendant's answer. *Green v. McKaskle*, 788 F.2d 1116, 1119 (5th Cir. 1986).

This Court must also determine whether it has subject-matter jurisdiction. FED. R. CIV. P. 12(h)(e). Unless otherwise provided by statute, federal district courts have jurisdiction over (1) federal questions arising under the Constitution, laws, or treaties of the United States and (2) civil actions between citizens of different states or foreign nations where the amount in controversy exceeds \$75,000. 28 U.S.C. §§ 1331, 1332.

The Court agrees with the Magistrate Judge's conclusion Dove's divorce action must be dismissed, as this Court lacks subject-matter jurisdiction to entertain it. Neither federal question jurisdiction nor diversity jurisdiction obtains, as divorce is a state law cause of action, *see, e.g.*,

Milligan v. Milligan, 484 F.2d 446, 447 (8th Cir. 1973) (“[D]ivorce actions do not engender a federal question[.]”), and both Mr. and Mrs. Dove are citizens of Texas, *see* Orig. Pet. Divorce [#1] at 2. As there is no basis for this Court to assert jurisdiction, dismissal is warranted.

Conclusion

Accordingly,

IT IS ORDERED that the Report and Recommendation of the United States Magistrate Judge [#4] is ACCEPTED; and

IT IS FINALLY ORDERED that Plaintiff Angelica Dove’s Original Petition for Divorce is DISMISSED WITHOUT PREJUDICE for want of jurisdiction.

SIGNED this the 5th day of December 2014.



SAM SPARKS
UNITED STATES DISTRICT JUDGE